

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BOSTON RESTAURANT ASSOCIATES,
INC.,

Plaintiff,

-against-

MICHAEL WARD and REGINA'S
FAMILY PIZZA INC. d/b/a REGINA
CAFE & PIZZERIA,

Defendants.
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MEMORANDUM AND ORDER

Case No. 17-CV-5557-FB-RML

BLOCK, Senior District Judge:

On August 1, 2018, Magistrate Judge Levy issued a Report and Recommendation ("R&R") recommending that plaintiff's Motion for Default Judgment be denied. The R&R advised that "[a]ny objections to this Report and Recommendation must be filed . . . within fourteen (14) days," and that "[f]ailure to file objections within the specified time waives the right to appeal the district court's order." R&R at 16. The R&R was served on all defendants at their last known address on August 1, 2018, making objections due by August 15, 2018.¹ To date, no objections have been filed.

¹ On September 26, 2018, the notice mailed to defendant Michael Ward, Chief Executive Officer of Regina's Family Pizza Inc. d/b/a Regina Café & Pizzeria was

Where clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court, however, will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

No such error appears on the face of the R&R. Therefore, the Court adopts it without *de novo* review and denies plaintiff’s Motion for Default Judgment. The Clerk shall dismiss this action without prejudice.

SO ORDERED.

/S/ Frederic Block

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
December 3, 2018

returned to sender as undeliverable. Given the outcome of the case, however, there is no prejudice against defendants here.